

March 27, 2017

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WC Docket No. 12-375 – ICSolutions’ Comments on Securus Technologies, Inc.’s Motion for Extension of Annual Reporting Deadline

Dear Secretary Dortch,

Inmate Calling Solutions, LLC (“ICSolutions”) supports the requests for an extension of time in filing the first annual report. As the basis for these requests, we incorporate by reference the arguments set forth in Securus Technologies, Inc. Motion for Extension, filed on March 10, 2017, in this Docket No. 12-375.

In addition to those arguments, we would like to point out that the Order states the Annual Reports are required “to facilitate compliance” with the other ICS rules, such as the rules imposing rate and fee caps in FCC Order No. 15-136 (“2015 Order”). But the FCC cannot enforce compliance with some of the rules because the Court of Appeals stayed all rules that had to do with the rate caps set forth in both FCC Order No. 15-136, Order, *Global Tel*Link v. Federal Communications Commission*, Case No. 15-1461, at 1-2 (D.C. Cir., Mar. 7, 2016) (staying 47 C.F.R. §§ 64.6010, 64.6020(b)(2)) (“*Stay Order*”).¹ The Court also subsequently stayed further attempts by the FCC to impose lower rates on all ICS calls. Order, *Securus Technologies, Inc. v. Federal Communications Commission*, Case No. 16-1321 (D.C. Cir., Nov. 2, 2016) (staying FCC Order no. 16-102).

As a result of the Court’s stays, at this time, the FCC’s rate caps are only in place under the FCC Order No. 13-113, which had similar annual reporting requirements stayed by the Court of Appeals in D.C. Circuit Case No. 13-1280. Order, *Securus Technologies, Inc. v. Federal Communications Commission*, Case No. 13-1280 (D.C. Cir., Jan. 13, 2014) (staying 47 C.F.R. § 64.6060 Annual Reporting and Certification Requirement). The Annual Reporting requirements in the 2015 Order were not stayed, but as the FCC pointed out in its opposition to the Motion for Stay by the Appellants, the Annual Reporting requirements were not yet in effect, since the Office of Management and Budget (“OMB”) had not yet approved them. Opposition of

¹ By staying these rules, it also had the effect of neutralizing §64.6080 (Per-Call, or Per-Connection Charges) and § 64.6090 (Flat-Rate Calling) since ICS providers could charge more for the first minute, having the same effect of a per-call surcharge or flat-rate calling.

Respondent the Federal Communications Commission to Motions for Partial Stay, *Global Tel*Link v. Federal Communications Commission*, Case No. 15-1461, at 12 (D.C. Cir., Feb. 12, 2016). Thus, while the Court's Stay Order did not elaborate as to why it stayed some rules but not others, it is certainly more than possible that the Court found the potential harms of the annual reporting requirement in the 2015 Order to be minimal and, arguably, not yet a ripe issue in reliance on the FCC's opposition to the stay that the rule had not yet been approved by the OMB and would not be implemented for quite some time.

Nonetheless, one need not speculate as to the Court's rationale for the Stay Order to see that it is beyond reasonable dispute that the FCC cannot enforce the 2015 Order's rates during the effective time of the *Stay Order*. Thus, it seems as though it would be an improper use of regulatory authority to compel reporting of rates and related information used to determine rates (e.g., commissions) under the guise of enforcement. It should also be noted that even if the FCC does not obtain the information now, it will be able to obtain this information in the ICS providers' filings pursuant to the Mandatory Reporting Requirements, due March 1, 2019, if the Court of Appeals affirms the 2015 Order.

Therefore, in order to have the Annual Reporting template agree with the underlying compliance purpose of the rule, ICSolutions recommends the FCC extend the date of the first Annual Reporting requirement to the April 1st following the calendar year in which the Court of Appeals' affirms the 2015 Order, which is when the rules sought for enforcement with the Annual Reporting would actually become effective. Alternatively, the FCC can modify the Annual Reporting template to require only that information related to rules which can be enforced for the calendar year 2016, namely fees.

Respectfully,



Tim McAteer
President, ICSolutions

Copy via email to:

Chairman Ajit Pai
Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Nicholas Degani, Senior Counsel to Chairman Pai
Dr. Jay Schwartz, Acting Wireline Advisor to Chairman Pai
Claude Aiken, Legal Advisor to Comm'r Clyburn
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